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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17  
18 STATE OF CALIFORNIA, *et al.*,

19 Plaintiffs,

20 v.

21 WILBUR L. ROSS, JR., *et al.*,

22 Defendants.  
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Civil Action No. 3:18-cv-01865-RS

**DEFENDANTS' OPPOSITION  
TO PLAINTIFFS' EVIDENTIARY  
OBJECTION TO DEFENDANTS'  
REPLY IN SUPPORT OF THEIR  
MOTION FOR SUMMARY JUDGMENT**

Date: December 7, 2018

Time: 10:00 a.m.

Judge: Honorable Richard Seeborg  
Dept.: 3

**OPPOSITION**

Plaintiffs have filed an objection to Defendants’ reliance upon a portion of the trial testimony of Dr. John Abowd, Chief Scientist of the Census Bureau, in support of their summary judgment briefing. *See* ECF 97. That objection is misplaced. *See Frazer v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003) (holding that the court did not need to decide whether a diary was admissible because it “would be sufficient if the contents of the diary are admissible at trial, even if the diary itself may be inadmissible”). The Ninth Circuit has explained that, at summary judgment, “we do not focus on the admissibility of the evidence’s form. We instead focus on the admissibility of its contents.” *Id.* (citing *Block v. City of Los Angeles*, 253 F.3d 410, 418-19 (9th Cir. 2001); *Fed. Deposit Ins. Corp. v. N.H. Ins. Co.*, 953 F.2d 478, 485 (9th Cir. 1991)). There can be no dispute that Defendants could call Dr. Abowd at a trial in this case—as they did during the trial in the Southern District of New York—and elicit the testimony identified in Exhibit A of the Declaration in support of Defendants’ summary judgment reply. Accordingly, because Dr. Abowd’s testimony is capable of being reduced to an admissible form at any trial in this case, Plaintiffs’ objection to this testimony should be overruled.

Date: December 4, 2018

Respectfully submitted,

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/s/ Martin M. Tomlinson  
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***California v. Ross*, No. 3:18-cv-1865-RS  
Defendants’ Opposition to Plaintiffs’ Evidentiary Objection  
to Defendants’ Reply in Support of Their Motion for Summary Judgment**

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***California v. Ross*, No. 3:18-cv-1865-RS  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of December, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Martin M. Tomlinson

MARTIN M. TOMLINSON